SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 879

BARBARA J. BEAUCHAMP, GEORGANN MARTIN AND MAX TROUB,
Petitioners,

VS.

THE CITY OF OKLAHOMA CITY, A MUNICIPAL CORPORATION; JAMES H. NORICK, MAYOR OF THE CITY OF OKLAHOMA CITY; PATIENCE LATTING, JOHN M. SMITH, GEORGE N. STURM, NELSON E. KELLER, BILL H. BISHOP, BEN FRANKLIN, A. L. DOWELL AND ROWE COOK, MEMBERS OF THE CITY COUNCIL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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CITATIONS

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Petitioners pray that a Writ of Certiorari issue to review the judgments of the Supreme Court of the State of Oklahoma, entered in the above entitled cause on October 13, 1970.

OPINIONS BELOW.

The judgment of the trial court sustaining motion in abatement is unreported and is printed as Appendix C hereto, infra, p A-4.

The Opinions of the Supreme Court of the State of Oklahoma are unreported and are printed as Appendix B hereto, infra, p A-5.

JURISDICTION

The judgments of the Supreme Court of the State of Oklahoma were entered on October 16, 1970. Appendix C, p. A-5, infra.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3) and Rule 19 of the Supreme Court of the United States. The Constitutional and Federal questions were raised in the Petitions filed in the trial court and the Supreme Court of Oklahoma (R p 4 and 87).

The Ordinances of the City of Oklahoma City authorizing the issuance of its general obligation Bonds was challenged on grounds that it is void as in violation of the United States Constitution and the Supreme Court of Oklahoma held the Ordinance constitutional.

QUESTIONS PRESENTED

1. Is the provision for challenging Bond Elections in Oklahoma a "well defined period" within the meaning of *City of Phoenix v. Emily Kolodziejski*, _____ US _____ 26 L Ed 2d 523, 90 S. Ct. 1990?

2. Can a resident individual who was neither a registered voter nor a non-property taxpayer institute and prosecute a suit contesting the constitutionality of a law which gives only property taxpayers the right to vote in elections to approve issuance of municipal bonds to be secured solely by property taxes?

3. Is it a denial of equal protection to deprive these resident Petitioners or any other resident of the entity holding a Bond Election the right to challenge the validity of such a Bond Election, whether they be registered voters or non-registered voters, property taxpayers or non-property taxpayers, or any combination thereof, when to register to vote in the subject election would have been a vain and futile gesture under an

Oklahoma Constitutional provision that limits the electorate to property taxpayers only?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes involved are Title 62, Oklahoma Statutes Section 13, 12 O. S. 221 and 12 O. S. 223 and 12 O. S. (1961) 322, Appendix B, p. A-2, infra. The Constitutional provisions involved are Article X, Section 27 of the Constitution of the State of Oklahoma, Appendix A, p. A-1, infra, and the U. S. Constitutional provisions of due process and equal protection, 5th and 14th Amendments.

STATEMENT

On June 9, 1970, the qualified property tax paying voters of Oklahoma City, Oklahoma, did, pursuant to provisions of Article X, Section 27 of the Oklahoma State Constitution, PA-1, infra, at a special election authorize the issuance of General Obligations Bonds in the principal amount of $19,189,800.00.

On August 18, 1970, the Attorney General of the State of Oklahoma, as ex officio Bond Commissioner did, pursuant to provisions to Title 62, Oklahoma Statues, Section 13, p. A-3, infra, examine and approve the issuance of said Bonds.

On September 16, 1970, Petitioner, Max Troub, a resident non-property taxpayer and a non-registered voter, filed a class action against the Respondent, The City of Oklahoma City, Oklahoma, seeking to restrain and enjoin said Respondent from issuing, selling or delivering the aforesaid General Obligation Bonds, for the reason that said election limited, pursuant to Article X, Section 27 of the Oklahoma State Constitution, the electorate to only those voters who were property taxpayers, thereby denying Troub and all others similarly situated equal protection guaranteed by the Constitution of the United States.

On September 17, 1970, the Petitioner, Georgann Martin, a resident non-property taxpayer and a non-registered voter,

was granted leave by the trial court to intervene in the above mentioned case and to adopt the petition filed therein as her own, seeking in substance the same relief as Max Troub.

Thereafter, on September 17, 1970, the last day before the bonds would become incontestable, the Petitioner, Barbara J. Beauchamp, a non-property taxpayer but a registered voter filed her Petition (R. P4) for an injunction in the Oklahoma Supreme Court, seeking to enjoin and restrain Respondents from issuing the bonds purportedly authorized by the election of June 9, 1970.

On September 18, 1970, the Respondent, The City of Oklahoma City filed its Motion in Abatement and Demurrer to the Petition and the Petition in Intervention filed by Petitioners Martin and Troub. On September 18, 1970, the trial court, having read the briefs submitted, and hearing oral arguments from all parties, sustained the Respondent's, The City of Oklahoma City, Motion in Abatement, Appendix C here, infra, P. A-4, and entered judgment in favor of said Respondent dismissing the suit on grounds that Petitioners Troub and Martin were not registered voters on the date of said election and therefore not real parties in interest, to all of which Petitioners excepted and gave oral notice of intention to appeal to the Supreme Court of the State of Oklahoma. On that same day the Petitioner, Georgann Martin, filed her appeal in the Supreme Court of the State of Oklahoma.

On September 18, 1970, the Oklahoma Supreme Court, after hearing oral arguments of the parties, took under advisement the question of whether or not to accept original jurisdiction of the suit of Petitioner Beauchamp, a registered voter and whether or not to consolidate the same with the appeal suit of Petitioner Martin.

On September 23, 1970 petitioner Max Troub filed his appeal in the Oklahoma Supreme Court. All briefs in support of contentions were filed by September 24, 1970.

On October 16, 1970, the Oklahoma Supreme Court entered its opinions.

REASONS FOR GRANTING THE WRIT

1. The decisions of the Court below in the instant cases are in direct conflict with the decision of this court in the case of *City of Phoenix v. Kolodziejski*, supra.

2. Oklahoma does have a "well defined" period for challenging bond elections. The time during which an election of the type at issue here may be challenged for any cause has been defined by the Oklahoma Legislature in 62 O. S. Section 13," Appendix, B, p. A-3, infra, as the thirty (30) day period immediately following approval of the bonds by the State Bond Commissioner and that definition has been supported by the Oklahoma Supreme Court in numerous instances. The thirty-day period was held to be the exclusive period of time during which litigation could be commenced when challenged on procedural grounds in *Ricck v. Town of Longdale*, 389 P2 482, and even when the challenge was on constitutional grounds as in *White v. Pottawatomie County*, 184 P2 446. In both instances, the Oklahoma Supreme Court, held that the actions challenging the bond issue were premature and that the challengers must await the approval of the bond issue by the Bond Commissioner before the challengers could be heard.

The Court, in its ruling below in the case at bar, attempted to avoid the impact of *City of Phoenix v. Kolodziejski*, supra, by modifying its well-established position set forth above by holding in effect that if the entity which conducted the bond election acquiesces in a challenge to its bond election prior to the 30-day period set forth in 62 O. S., § 13, by its election not to have same abated such challenge may be instituted and therefore the period in which to challenge bond elections in Oklahoma is not well-defined as prescribed in *City of Phoenix v.*

Kolodziejski, supra, and the election is not subject to said decision.

3. It is a denial of equal protection to hold that the Petitioners Martin and Troub cannot maintain an action attacking the validity of an election for the issuance of General Obligation Bonds that excluded non-property taxpayers from voting on the grounds that Petitioners Martin and Troub were not duly qualified and registered voters, when, under the limitations of Article X, Section 27 of the Oklahoma Constitution, the act of registering to vote would be a vain and useless gesture, particularly when Petitioners and those similarly situated, will bear a portion of the ultimate burden of bond costs.

4. The Oklahoma statute which provides for a challenge to a bond election, 62 O. S., § 13, Appendix B, p.A-3, infra, does not require the suit to be brought by only registered voters of the entity holding a Bond Election and it would appear the statutes applicable to parties generally would apply.

Title 12 Okla. Stat. § 221, provides in pertinent part, that:

> "Every action must be prosecuted in the name of the real party in interest except as otherwise provided in this article . . ."

And in the same Title 12, at § 233 thereof, it is provided that:

> "When the question is one of common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

The substantial interest of residents in the question of validity of a bond election in their city, whether they be registered or non-registered voters, was recognized by this Court in *Phoenix v. Kolodziejski*, supra, inasmuch as local taxes paid

by all residents helped satisfy debt requirements of bonds authorized and the burden of property taxes falls upon virtually all residents through increased rents and prices.

Settlement of these questions by this Court is plainly in the public interest as these Petitioners and others like them will be faced with the burden of paying a portion of the bond indebtedness without having had the opportunity to vote on same, nor even the right to challenge the validity of same.

5. The questions presented herein by petitioners are not mere matters of state procedure, but directly concern the rights of petitioners to the equal protection of the law guaranteed by the 14th Amendment of the U. S. Constitution as set forth in *City of Phoenix v. Kolodziejski*, supra.

6. Until the decision of the Court below, the Oklahoma Law clearly defined the 30-day period following the Bond Commissioners approval of Bonds as the exclusive period of time for challenging a Bond Election. As a result of said decision, petitioners are being denied the opportunity to assert their Constitutional rights enunciated in *City of Phoenix v. Emily Kolodziejski*, supra, by a modification of the State law as it existed on the date of that decision. The decision of the Court below is the only Oklahoma case that could reasonably be construed as holding that there is no well defined period for challenging Bond Elections.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted. If this should have been an Appeal instead of a Petition for a Writ of Certiorari, Petitioners pray the Court to treat it as such.

Respectfully submitted,

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